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7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**
 9 **SAN JOSE DIVISION**

11 JOHN GABOR, KAY GABOR,

12 Plaintiffs,

13 v.

14 UNITED STATES OF AMERICA, ET
 15 AL.

16 Defendants.

CASE NO. C07 06091 RW

**REPLY TO PLAINTIFF'S OPPOSITION
 TO DEFENDANT BRADLEY
 SOLOMON'S MOTION TO DISMISS**

Date: July 18, 2008

Time: 9:00 a.m.

Place: Ctr. 4, 4th Floor

Judge: The Ronald M. Whyte

Date Action Filed: December 3, 2007

Trial Date: Not Set

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **PRELIMINARY STATEMENT**

19 In opposition, plaintiffs have failed to address defendant's two grounds for dismissal.
 20 Plaintiffs did not address defendant's argument that he is entitled to absolute quasi-judicial
 21 immunity. The only mention, by plaintiffs, of the immunity argument is contained in paragraph
 22 four of their opposition. That sole contention, made by plaintiffs, is nonsensical. Paragraph
 23 four states: "Defendants [sic] Solomon has no immunity as a 'coconspirator' [sic] since his
 24 personal participation in the conspiracy and his liability will be decided by a jury." Plaintiffs
 25 make this statement without citing any authority.

26 Plaintiff, also, failed to address Mr. Solomon's second argument in the motion to
 27 dismiss, that the Complaint failed to state facts to state a claim for a 42 U.S.C. § 1983 action.

1 As more fully stated hereinafter, the complaint should be dismissed as defendant Bradley
2 Solomon is immune from suit and the Complaint failed to state facts to state a claim.

3 **ARGUMENT**

4 **I.**

5 **DEPUTY ATTORNEY GENERAL BRADLEY SOLOMON**
6 **IS ENTITLED TO ABSOLUTE QUASI-JUDICIAL IMMUNITY**

7 Defendant Bradley A. Solomon is entitled to absolute immunity because the alleged
8 conduct was taken in connection with the judicial process. *Fry v. Melarango*, 939 F.2d 832,
9 836 (9th Cir. 1991) (government attorneys immune for acts during the judicial phase of
10 litigation; *Flood v. Harrington*, 532 F.2d 1248, 1250-52 (9th Cir. 1978) (same). Plaintiffs have
11 failed to provide any authority to challenge this defense.

12 Accordingly, defendant Bradley A. Solomon is immune from suit as his alleged conduct
13 was performed in the course of his defense of the Attorney General.

14 **II.**

15 **PLAINTIFFS HAVE FAILED TO STATE FACTS TO STATE**
16 **CLAIM FOR A VIOLATION OF 42 U.S.C. § 1983**

17 There is a paucity of facts regarding Mr. Solomon's alleged wrongful act. As mentioned
18 in defendant's motion to dismiss, there is one short paragraph that referenced Mr. Solomon's
19 alleged actions. Even if plaintiffs' allegations were true, they have failed to state facts to state a
20 claim.

21 **CONCLUSION**

22 For the foregoing reasons, defendant Bradley A. Solomon respectfully requests that the
23 motion to dismiss be granted with prejudice.

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1 Dated: June 9, 2008

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Respectfully submitted,

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EDMUND G. BROWN JR., Attorney General
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PAUL T. HAMMERNESS
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8 By: _____

9 KAY K. YU

10 Attorneys for Defendant Bradley A. Solomon

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Gabor v. United States of America, et al.*
U.S. D.C. Northern Case No.: 5:07-cv-06091 PVT

I declare:

I am employed in the County of San Francisco, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102.

On June 9, 2008, I served the attached:

**REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT BRADLEY
SOLOMON'S MOTION TO DISMISS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

**John Gabor and Kay Gabor
590 Smokey Court
Campbell, CA 95008-3717**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 9, 2008, at San Francisco, California.

Anh Ho

Typed Name



Signature